



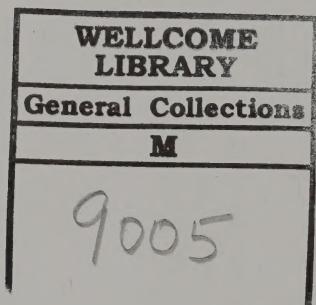
# Making decisions

Helping people who have difficulty deciding for themselves

A guide for legal practitioners

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# About this booklet

This booklet has been produced by the Lord Chancellor's Department to help solicitors, barristers, legal executives and other legal advisers whose work may involve acting on behalf of adults (aged 18 and over) with impaired mental capacity.

It explains the current legal position and lists sources of professional guidance and relevant organisations.

The booklet does *not* deal with the compulsory treatment of patients for mental disorder, the representation of patients before the Mental Health Review Tribunal, nor the provision of advice or representation for people with mental disorders who are questioned by the police or charged with a criminal offence.

The information contained in the booklet relates only to England and Wales.

The Government has accepted the need for changes in the law to improve and clarify the decision-making process for people unable to make decisions for themselves because of a lack of mental capacity. It will legislate when time allows. *Making Decisions* (published in 1999 and available at [www.lcd.gov.uk/family/mdecisions/intro.htm](http://www.lcd.gov.uk/family/mdecisions/intro.htm)) sets out the Government's proposals.



# 1. The role of the legal practitioner

Very few people, even those with severe disabilities and high support needs, are totally unable to make any decisions. For example, a person with severe learning disabilities may indicate by their behaviour whether they are happy to be admitted to hospital or residential care. An older person with dementia may be quite capable of collecting and spending their weekly pension, but may be unable to deal with more complex financial matters, like selling a property or paying residential care fees. Like anyone else, people who need support to make decisions are entitled to have their legal needs met.

Lawyers have an important role to play, not only in providing their clients with sound legal advice but also in helping them to make their own decisions and to enforce their legal rights. People who need support to make their own decisions may also need help to recognise that they have rights or that there may be a legal remedy to a problem that they are experiencing.

Legal practitioners may therefore be involved in:

- ▶ providing advice and information to their clients on the options available to them, on decisions that need to be made and on sources of help and advice
- ▶ making an assessment of a client's capacity to give instructions, or to carry out a particular legal transaction, with the assistance of a medical opinion where necessary
- ▶ acting on clients' instructions

- ▶ acting as attorney under an Enduring Power of Attorney where appointed by a client
- ▶ acting as receiver where appointed by the Court of Protection; and
- ▶ setting up a trust on behalf of a mentally incapacitated adult.

## 2. Defining and assessing mental capacity

People are considered to be competent to make their own decisions until it is proved that they are not. The courts have decided that in many circumstances 'capacity' means being able to *understand and retain relevant information and weigh it in the balance to make a choice*. This approach is used in a wide range of cases. The law looks generally at the capacity needed by the person to make a particular decision.

Some people's mental capacity (for example, those with mental health problems) may fluctuate. For others, like people with dementia, the loss of ability to cope worsens over time, so the point at which they are no longer able to make a particular decision is hard to pinpoint.

### Legal tests of capacity

Capacity is a legal concept. Different levels of capacity are required for different activities and the tests which are applied to determine whether a person has any particular capacity originate in law.



When assessing a person's capacity to make a decision, lawyers must be aware of the nature of the particular decision the person is being asked to make, and whether there is a specific legal test of capacity required to make that decision. For a few activities, such as competence to act as a witness in court, the legal test is set out in legislation. For others, such as making a will or drawing up an Enduring Power of Attorney, the requirements have been set out in case law.

If there is any doubt about the client's capacity, a medical opinion should be obtained. A medical practitioner should be asked to give an opinion about the client's capacity to carry out the activity or action in question, rather than for a general assessment of the client's mental condition.

The lawyer requesting a medical opinion has a responsibility to explain to the doctor the relevant legal test of capacity, and to provide information about the client's particular circumstances. For example, where an assessment is being made of a person's capacity to manage their property and affairs, the different elements of the legal test should be explained, together with a brief description of the extent of the person's property and affairs. This is required because a greater degree of capacity will be needed to manage more complicated affairs or extensive assets.

## **Further guidance**

*Assessment of Mental Capacity: Guidance for Doctors and Lawyers* contains practical suggestions for instructing doctors (see page 26).

## Who can assess capacity?

The person (for example a healthcare professional, relative or carer) who needs to obtain consent will be the first to consider whether the person concerned has the necessary capacity to give it. In legal matters such as making a will or an Enduring Power of Attorney the solicitor may decide to get an opinion from a doctor.

Where consent to medical treatment or examination is required, the doctor or other healthcare professional proposing the treatment should decide whether the patient has capacity to consent or to refuse consent. If a person's capacity is disputed, the High Court should decide.

The person's general practitioner should be able to give an opinion on his or her general condition and assess their capacity to make particular decisions. The person being assessed may feel more at ease with a familiar doctor, particularly if that doctor has known the person for some time. However, such familiarity and knowledge of the patient's family can also make an objective assessment more difficult. It may then be more appropriate to request an assessment from a specialist practitioner such as a psychiatrist or a geriatrician, who has expertise in the patient's particular medical condition. In any event, it will usually be important for the GP to be consulted.

The law tends to view doctors as experts in the assessment of mental capacity. In some circumstances, for example where an application is made to the Court of Protection to take over control of a person's financial affairs, the law requires an assessment of the person's capacity to manage their own affairs to be carried out by a 'registered medical practitioner'.

Where a will has been drawn up for an elderly or seriously ill person whose capacity may be in doubt, the courts have ruled that the will should be witnessed or approved by a medical practitioner. The practitioner should then record their findings (*Kenward v Adams [1975]*). If a person's capacity is the subject of court proceedings, the Court will require expert medical evidence.

A sample certificate of capacity form which can be completed and filed with the will, or any other legal document, can be found in *Assessment of Mental Capacity: Guidance for Doctors and Lawyers* (see page 26).

## Fluctuating capacity

Some people may be quite capable of making their own decisions and running their own lives for most of the time. But a mental health problem or other condition may affect their capacity and abilities at other times. For example, someone with a bi-polar disorder may spend money unwisely and get into debt during a hypomanic episode, which they may regret later when they regain capacity. A psychotic illness may affect someone's judgement for a time, but their symptoms may disappear later. This is known as 'fluctuating capacity' or temporary incapacity.

There may also be temporary factors that could affect someone's ability to make decisions, such as the effect of medication or distress caused by bereavement or a sudden shock. Physical problems such as loss of hearing or speech difficulties after suffering a stroke may make it seem as though someone's capacity has been impaired.

In cases of fluctuating or temporary incapacity (as in any other case) the lawyer needs to assess the person's capacity to make a particular decision at the time the decision has to be made. Where possible, he or she should try to put off the decision until the person has recovered, and regained the capacity to make their own decision.

Where it is likely that the person will have periods of incapacity, they may be able to plan for these in advance either by setting out their views about what should happen if a particular decision needs to be made, or by appointing someone to act on their behalf.

### 3. Best interests

Generally, the law will allow another person (such as a family member or social care professional) to take day-to-day actions on behalf of someone who lacks capacity. These actions include buying shopping, paying bills or handing out tablets prescribed by a doctor. This is called the *doctrine of necessity*.

In all cases the person taking basic day-to-day actions should act in the *best interests* of the person who lacks capacity.

'Best interests' means that the person's known wishes and beliefs and their general well-being must be taken into account. In relation to medical treatment, the High Court has ruled that these are not confined to best *medical* interests, but must take into account '*the patient's values and preferences when competent, their well-being and quality of life, relationships with family or other carers, spiritual and religious welfare and their own financial interests.*' (*Re S (Sterilisation: Patient's best interests) [2000] 2 FLR 389*).



In general, determining someone's best interests involves trying to find out what is most important to the person concerned, and what they would have wanted, rather than what would make life easier for those involved in their care (see **Hints for determining best interests** on page 23).

The recommendations made by the Law Commission (*Mental Incapacity* (Law Com 231, 1995)) on the factors to be considered in order to determine a person's best interests have been adopted by the courts in a number of rulings (see page 27).

There are special rules governing financial and healthcare decisions, and the person may have made arrangements for some decisions in advance. For example, financial decisions can *only* be made on a person's behalf if he or she has given someone specific legal authority to do so under an Enduring Power of Attorney or similar arrangement (see page 12).

## **What authority do lawyers have to act on behalf of people who do not have capacity?**

Lawyers can only act on a client's instructions. If the client lacks the capacity to give instructions (or loses capacity while a lawyer is doing work on their behalf) the lawyer must cease to act unless arrangements have been put in place authorising the lawyer to continue to act.

A lawyer may have authority to act on behalf of a person without capacity if one of the following measures has been taken:



- ▶ the client, while still competent, has made an Enduring Power of Attorney, appointing the lawyer as attorney
- ▶ the Court of Protection has appointed the lawyer as receiver, to take over management of the person's property and financial affairs
- ▶ the Department for Work and Pensions has appointed the lawyer to act as 'appointee' to take over the person's claim for benefits, receive the payments and spend the money on the person's needs
- ▶ in civil proceedings, a 'litigation friend' has been appointed to give instructions to the lawyer on behalf of the person who is unable to give his or her own instructions; and
- ▶ where the Official Solicitor is acting on behalf of an incapacitated person and the lawyer has been asked to act as the Official Solicitor's agent.

## 4. Financial decisions

### Arrangements for future financial decision-making

For people who have not lost mental capacity and who have limited assets, the arrangements may be quite simple and informal. For example, they can:

- ▶ arrange for a trusted relative or friend to be a signatory to their bank or building society account, to enable that person to draw out money or pay bills

- ▶ arrange for money to be put into a joint account with a trusted relative or friend; or
- ▶ arrange for an 'agent' to collect social security benefits and, if authorised, to use the money on their behalf. This is usually where the person has a physical disability and finds it difficult to get out to the post office or shops.

All of the above arrangements require the authorisation (in writing) of the person concerned. They enable the person to choose whom they wish to authorise, and to state the extent of that authority. This authorisation must be given while the person concerned has mental capacity. However, some of these arrangements, such as the authority to act as agent to collect a person's benefits, cease to be legally valid once the person has lost capacity to manage their own affairs. They can, however, be used as an indication of the person's wishes about whom they would like to take over.

The lawyer should, however, advise clients about the disadvantages of these simple measures. There is no formal supervision of these arrangements, no periodic scrutiny or monitoring, and as with anything which relies on trust, things may go badly wrong when people turn out not to be trustworthy.

A formal way of delegating financial decisions is for the person to make an Enduring Power of Attorney (EPA).

## Enduring Power of Attorney (EPA)

This is a form of deed that enables someone (the donor), while still mentally capable, to appoint someone (the attorney) to manage their financial affairs. The donor can appoint an attorney or attorneys:

- ▶ *either* to take over their financial affairs at once, and to continue to act as attorney even after the donor becomes mentally incapable; *or*
- ▶ to take over the financial affairs *only* when the donor is no longer mentally capable to act for him/herself.

An EPA can be general, covering all the donor's property and affairs, or the donor can set limits on what the attorney can do. The attorney must keep an account of the donor's money and property and, after registration, the Court of Protection (*see below*) may ask for these accounts to be sent to them.

The Court of Protection protects and manages the property and financial affairs of people with impaired mental capacity. The Public Guardianship Office (PGO) is the administrative office which supports the Court of Protection.

More information and advice about EPAs is available from the PGO (*see Useful organisations, page 28*).

## What is the test for capacity to make an EPA?

Legal practitioners who draw up an EPA must be satisfied that the client has the required capacity (*Re K, Re F [1988] Ch 284*). Different levels of capacity are needed to create an EPA from those required to manage day-to-day matters (*Re K, Re F 1988*). It may be desirable to have an EPA signed and registered immediately in some cases.

The Law Society has issued guidelines on EPAs to assist solicitors to assess a client's capacity and to take full and careful instructions from the donor. In particular, the guidelines cover the choice of a suitable attorney(s), the extent of powers to be delegated under the EPA, deciding when the EPA is to come into effect, and possible limitations on the attorney's authority to make gifts of the donor's assets. In order to minimise the risk of abuse, all of these matters require careful attention by the donor before making the EPA.

## What happens when the donor loses capacity?

The attorney must register the EPA with the Public Guardianship Office as soon as the donor has become, or is becoming, mentally incapable of managing their own affairs. Once the EPA is registered, the attorney can take over the handling of the donor's property and affairs as specified by the donor in the EPA document. The donor can no longer make financial decisions for him/herself unless this has been agreed in advance, although it will always be good practice for the attorney to consult with and involve the donor as far as possible.

The attorney will not be supervised unless the donor has made prior arrangements for this, for example by requiring the attorney to produce annual accounts to be checked by a solicitor or accountant. The Court of Protection has the power to ask for accounts from an attorney if any concerns are brought to the Court's attention, and can remove an attorney if those concerns prove to be justified.

## What happens when no advance arrangements have been made?

If the client's only source of income is social security benefits or pensions, the Department for Work and Pensions (DWP) can appoint an agent (called an '*appointee*') to take over the person's claim for benefits. This allows the appointee to make a claim for benefits, receive the payments and spend the money on the person's needs. The DWP can appoint a suitable person involved in the person's care, including a lawyer, but will usually give preference to an agent nominated by the person before they lost capacity.

If the client has property or other assets and has not made an EPA, an application must be made to the Court of Protection to appoint someone to manage their financial affairs. The Court will need medical evidence that the person '*is incapable, by reason of mental disorder, of managing and administering his property and affairs*' (Part VII of the Mental Health Act 1983) along with details of the person's property and affairs.

## What orders can the Court of Protection make?

The Court may make an order, called a *short order*, authorising someone to do whatever needs to be done to deal with the person's money. This is usually when the value of everything the person owns is limited and there is no property to be sold.

If the person has more assets, such as property or stocks and shares, the Court can appoint a *receiver*. This can be a family member or some other suitable person, a professional (such as a solicitor or accountant), or the director of social services of the local authority. If there is no-one willing or able to act as receiver, the Court can appoint a receiver from an approved panel. The order made by the Court will set out the receiver's duties relating to the management of the person's financial interests.

The Court will require the receiver to produce annual accounts and will oversee the way in which the receiver manages the person's affairs. The receiver is also required to apply to the Court for specific authorisation, for example to sell the person's property or to make gifts or loans of the person's money. The Court can direct the way in which the receiver manages the person's affairs and also has the power to remove the receiver, and appoint someone else, if there is evidence that the receiver is not carrying out his or her duties properly.

More information about these applications and the duties of a receiver is available from the PGO (see page 31).

## Disputes

If a dispute arises concerning, for example, the validity of an EPA or the suitability or actions of an attorney or receiver, an application can be made to the Court of Protection. Advice can be sought from the PGO on to how to proceed before the application is made.

In cases of dispute giving rise to possible conflicts of interest, clarification of solicitors' authority to act for patients or donors is given in the Court of Protection Master's Practice Direction of 9 August 1995 (*Law Society Gazette* [1995] 11 October, 21). (See page 27).

## 5. Healthcare decisions

Healthcare professionals can and should provide treatment without consent for patients who lack capacity to consent, if it is considered to be clinically necessary and in the best interests of the patient. The benefits for the patient should be weighed against the pain or distress of undergoing that treatment.

*No one* – not even husbands or wives, partners, close relatives, professional carers or independent advocates – can give or withhold consent to medical treatment on behalf of another adult, and should *never* be asked to sign a consent form on behalf of another person. Relatives and carers should be consulted about the patient's best interests, but only where this is commensurate with the duty of confidentiality and the patient's wishes.

An attorney acting under an EPA, a receiver or anyone else appointed by the Court of Protection has *no power to make personal or health care decisions* on behalf of the person they act for. However, the fact that they are in control of the donor's money will often mean that the attorney or receiver needs to be involved in (or consulted about) these decisions and what would be in the person's best interests, unless the person does not want them to be.

## Can arrangements about healthcare be made in advance?

Yes. While they still have capacity, a person can state their wishes about the forms of medical treatment that they would or would not be prepared to consent to if they should subsequently lose capacity to decide for themselves. This is known as an 'advance statement', 'advance directive' or 'living will'.

## What can advance statements include?

There are various types of advance statements:

- ▶ a requesting statement giving someone's aspirations and preferences
- ▶ a statement of general beliefs and aspects of life which someone values
- ▶ a statement naming someone who should be consulted at the time a decision needs to be made

- ▶ a clear instruction refusing some or all medical treatments. This is known as an advance directive
- ▶ a statement requesting certain types of treatment that someone would want to receive in certain circumstances; or
- ▶ a statement setting out a degree of irreversible deterioration after which no life-sustaining treatment should be given.

Advance statements can be a combination of some or all of the above. They *cannot* require doctors to do anything which is not lawful.

## Are advance statements legally binding?

Only in certain circumstances. Advance directives *refusing* treatment are legally binding, even if carers and relatives or healthcare professionals disagree with them, as long as:

- ▶ the refusal was made while the person still had mental capacity and he or she understood the implications of their decision
- ▶ it is clear and applicable in the particular circumstances in which treatment is proposed; and
- ▶ it was made without undue pressure from others and there is no reason to believe that the person has changed their mind.

However, these only apply where the person has lost capacity – a contemporaneous, competent decision *always* overrides an advance directive. In cases where there is genuine doubt or ambiguity about the person's intention or capacity at the time the statement was made, healthcare professionals should adopt a 'best interests' approach until clarification is obtained.

Requesting statements and general statements of preference should be respected by healthcare professionals, if appropriate, and taken into account in deciding what is in someone's best interests. However, they are *not* legally binding.

## 6. Applications to the High Court

The courts have identified certain circumstances when an application must be made to the High Court. These are:

- ▶ where there is serious uncertainty about the patient's capacity to consent, or their best interests; or
- ▶ where there is serious unresolved disagreement between a patient's family and health professionals. In such cases, anyone involved (a relative, carer, healthcare professional or anyone else with a legitimate interest) can ask the Court to decide.

There are also particular types of treatment which can only be carried out without the patient's consent if the Court has authorised it. These are:

- ▶ sterilisation for contraceptive purposes
- ▶ donation of tissue, including bone marrow; or
- ▶ withdrawal of nutrition and hydration from a patient in a permanent vegetative state.

The Court has no power to consent to medical treatment on behalf of an incapacitated person. However, it can make a declaration on any of the following matters relating to medical treatment:

- ▶ to confirm that the person lacks capacity to consent to medical treatment
- ▶ that the proposed treatment is in the person's best interests
- ▶ that health professionals would not be acting unlawfully if they carried out the proposed treatment
- ▶ whether the person should have certain types of irreversible medical treatment, such as sterilisation for contraception purposes; or
- ▶ whether the person should have certain medical treatment withdrawn, such as artificial nutrition and hydration from someone in a permanent vegetative state.

The Court can also make a declaration on the following personal welfare matters:

- ▶ where the person should live, for example with particular family members or in residential or nursing home care
- ▶ whether the person should have contact with other family members, for example after the family has been split by divorce; or
- ▶ where there is serious uncertainty as to the patient's best interests or capacity to consent.

In health or welfare cases where the person lacks capacity to be able to instruct their own solicitor, the Official Solicitor will usually be appointed to act on the person's behalf.

## 7. Recovering capacity

Sometimes a person who had previously lost capacity to make their own decisions recovers sufficiently to manage their own affairs again. If no formal arrangements have been made to delegate decisions to someone else, the person can simply start making their own decisions again.

If the person has made an advance statement about health and wishes to change their mind, he or she can simply destroy the written document and inform everyone who knew about it that it is no longer valid. A person may also withdraw an advance directive verbally, and this must be noted in any client or medical case records. While the person has capacity, he or she can make a new statement at any time.

If the person has made an EPA that has been registered, or has had a receiver appointed by the Court of Protection, they cannot regain control of their own affairs without the agreement of the Court of Protection. If they recover the capacity to manage their own affairs, an application must be made to the Court for an order to revoke the EPA or to discharge the receivership. The Court will need medical evidence that the person no longer has a mental disorder which affects their capacity to manage their own affairs. Notice will have to be given to banks and other relevant organisations that the EPA or Court of Protection Order has been revoked and that the person is taking back the management of his or her financial affairs.

Similarly, if the person is involved in legal proceedings, and a litigation friend has been appointed to give instructions on their behalf, the litigation friend cannot be removed without the agreement of the Court. Again, the Court will need medical evidence of the person's recovery.

## 8. Combating abuse, exploitation and neglect

Legal practitioners must be alert to any signs of abuse or exploitation of clients who may be unable to protect themselves. For example, inappropriate gifts of money or property, or unexpected changes in a person's financial circumstances, may suggest exploitation or financial mismanagement. Older clients may be anxious about doing anything without the agreement of family members, which may indicate undue influence. The Law Society has produced guidance cards for solicitors who deal with issues such as mortgage fraud and money laundering. These cards summarise the likely indicators which lawyers could be expected to recognise, and are available from the Law Society practice advice line on 0870 606 2522.

Local authority Social Services departments have responsibility, jointly with other relevant agencies, for putting in place effective local strategies for preventing, detecting and dealing with incidents of abuse. Legal practitioners should be aware of local procedures and joint protocols, including relevant contact details, so that immediate action can be taken if abuse is suspected.

As a basic guide, if abuse is suspected in relation to:

- ▶ the collection or use of social security benefits – contact the local Job Centre Plus (for those over the age of 60, Pension Services)
- ▶ the actions of an attorney or receiver – contact the Public Guardianship Office; or

- ▶ the care or treatment given to a vulnerable person in a hospital or residential care home – contact the management of the relevant NHS trust or local authority Social Services.

If it is suspected that a criminal act has been committed against a vulnerable person, such as theft or physical or sexual assault, discuss your concerns with the police.

If you think that any form of abuse (such as neglect) has occurred, discuss your concerns with local authority Social Services.

## 9. Useful information and contacts

### Hints for determining best interests

***Find out the past and present wishes and feelings of the person and the factors the person would consider if he or she were able to do so.***

Try to find out the person's own wishes and values and any views they may have held before they lost capacity. Check the person's case notes to see if any record has been made of their views or wishes. These may have been set out in a document, such as an advance statement, or expressed informally to relatives or other people involved in their care. Care should be taken that these are the person's true wishes. Check that he or she has not been unduly influenced by others and that these wishes or views have not changed over time or because of a change in circumstances.

Try to consider everything that may be important to the person, even though it may not be directly relevant to the particular decision which needs to be made. For example, religious, ethnic or cultural values, particular hobbies or interests and likes or dislikes may all be important in helping to decide what may be in the person's best interests.

***Enable and encourage the person to participate, or improve his or her ability to participate, as fully as possible in the decision-making process.***

Always try to consult the person and find out their current views. Try to take time to explain what is happening and the decision that needs to be made. Even if they are unable to make the decision itself, they may have views on issues that affect the decision, and on what is best for them. Try to find out the best way to communicate with the person. Again, family members, an independent advocate, speech therapist or other professionals may be able to help.

***Consult relatives and others, where appropriate and practical, about the person's wishes and feelings and what would be in his or her best interests.***

Try to consider the views of people close to the person, especially close relatives, partners, independent advocates or professional carers. Close relatives or friends may have a better knowledge of the person's views and wishes or may have a different but equally valid view of what may be best for them. Family members may have other records or documents which could be useful to refer to.

However, the person has a right to confidentiality and may not want certain people to be involved in the decision-making process.

***Consider whether the proposed action or decision can be achieved in any other way that is less restrictive of the person's freedom of action.***

Explore all possible options or alternatives that may be available, and consider which option would allow most freedom for the person's future choices.

# Further guidance

Subject	Title	Available from
<b>Advance Statements</b>	<i>Advance Statements about Medical Treatment</i> (1995)	British Medical Association Tel: 020 7383 6286 <a href="http://www.bma.org.uk/ap.nsf/Content/codeofpractice">www.bma.org.uk/ap.nsf/Content/codeofpractice</a>
<b>Advance statements</b>	<i>Advance Statements – BMA Views</i>	British Medical Association Tel: 020 7383 6286 <a href="http://www.bma.org.uk/ap.nsf/Content/advancestatements">www.bma.org.uk/ap.nsf/Content/advancestatements</a>
<b>Applications to the court in medical decisions</b>	<i>Ms B and NHS Hospital Trust 2002</i> (High Court Judgment)	<a href="http://www.courtservice.gov.uk/judgmentsfiles/j1075/B_v_NHS.htm">www.courtservice.gov.uk/judgmentsfiles/j1075/B_v_NHS.htm</a>
<b>Applications to the High Court in medical and welfare decisions</b>	<i>Declaratory Proceedings: Medical &amp; Welfare Decisions for Adults who Lack Capacity.</i> (Fam Law 351, July 2001)	Official Solicitor Tel: 020 7911 7127 <a href="http://www.offsol.demon.co.uk/adultdeclarations.htm">www.offsol.demon.co.uk/adultdeclarations.htm</a>
<b>Assessing capacity</b>	<i>Assessment of Mental Capacity: Guidance for Doctors and Lawyers.</i> (BMA and Law Society, 1995 – new edition due 2003)	Available from BMJ Bookshop Tel: 020 7383 6286 <a href="http://www.bma.org.uk/ethics">www.bma.org.uk/ethics</a>
<b>Assessment, admission and compulsory treatment of patients with a mental disorder</b>	<i>Mental Health Act: Code of Practice</i> (1999) (Second edition due 2003)	Department of Health <a href="http://www.doh.gov.uk/pub/docs/doh/mhcop.pdf">www.doh.gov.uk/pub/docs/doh/mhcop.pdf</a>
<b>Best interests</b>	<i>Assessment of Mental Capacity: Guidance for Doctors and Lawyers</i> (BMA and Law Society, 1995 – second edition due 2003)	Available from BMJ Bookshop Tel: 020 7383 6244 <a href="http://www.bma.org.uk/ethics">www.bma.org.uk/ethics</a>

Subject	Title	Available from
<b>Confidentiality</b>	<i>Assessment of Mental Capacity: Guidance for Doctors and Lawyers</i> (BMA and Law Society, 1995 – second edition due 2003)	British Medical Association <a href="http://www.bma.org.uk/ap.nsf/content/consenttoolkit+m">www.bma.org.uk/ap.nsf/content/consenttoolkit+m</a>
<b>Practice direction</b>	<i>Authority of Solicitors to Act for Patients or Donors.</i>	Court of Protection <a href="http://www.offsol.demon.co.uk/practbfm.htm">www.offsol.demon.co.uk/practbfm.htm</a>
<b>Reform of the law for people with mental incapacity</b>	<i>Mental Incapacity</i> (Law Commission Report No 231 (1995))	The Stationery Office Tel: 0870 600 55 22 <a href="http://www.lawcom.gov.uk/549.htm">www.lawcom.gov.uk/549.htm</a>
<b>Reform of the law for people with mental incapacity</b>	<i>Making Decisions – the Government's proposals for making decisions on behalf of mentally incapacitated adults</i> (1999)	Lord Chancellor's Department <a href="http://www.lcd.gov.uk/consult/family/decision.htm">www.lcd.gov.uk/consult/family/decision.htm</a>
<b>Reform of the law for people with mental incapacity</b>	<i>Campaign Pack</i>	Making Decisions Alliance Tel: 020 7306 0807 <a href="http://www.makingdecisions.org.uk">www.makingdecisions.org.uk</a>
<b>Withdrawing treatment</b>	<i>Withholding and Withdrawing Life Prolonging Medical Treatment</i> (2001)	Available from BMJ Bookshop Tel: 020 7383 6244 <a href="http://www.bmjpg.com/withwith/ww.htm">www.bmjpg.com/withwith/ww.htm</a>

# Useful organisations

Organisation	What it is/does	Contact
Action on Elder Abuse	Provides a confidential helpline service for anyone concerned with the abuse of older people and emotional support for those involved.	Astral House 1268 London Road London SW16 4ER  Freephone Helpline: 0880 8808 8042 <a href="http://www.elderabuse.org.uk">www.elderabuse.org.uk</a>
Age Concern	Provides national information line for older people and their concerns.	Age Concern England Astral House 1268 London Road London SW16 4ER  Tel: 020 8765 7200 <a href="http://www.ageconcern.org.uk">www.ageconcern.org.uk</a>
Alert	Campaigns against legalised euthanasia. Provides information on matters relating to Living Wills, Advance Directives and Motor Neurone Disease.	27 Walpole Street London SW3 4QS  Tel: 020 7730 2800 <a href="http://www.donoharm.org.uk">www.donoharm.org.uk</a>
Alzheimer's Society	Care and research charity for people with all forms of dementia, their families and carers.	Gordon House 10 Green Coat Place London SW1P 1PH  Helpline: 0845 300 0336 <a href="http://www.alzheimers.org.uk">www.alzheimers.org.uk</a>
CARERS UK	Looks after family, partners or friends in need of help because they are ill, frail or have a disability.	Ruth Pitter House 20/25 Glasshouse Yard London EC1A 4JT  CarersLine: 0808 808 7777 020 7490 8824 <a href="http://www.carersonline.org.uk">www.carersonline.org.uk</a>

Organisation	What it is/does	Contact
<b>Citizen Advocacy Information and Training</b>	Provides advice about citizen advocacy groups in the initial stages of setting up schemes. Runs training days and gives support to existing schemes.	Unit 164 Lee Valley Technopark Ashley Road London N17 9LN  Tel: 020 8880 4545 <a href="http://www.citizenadvocacy.org.uk">www.citizenadvocacy.org.uk</a>
<b>Counsel and Care</b>	Provides a confidential and free advisory service for people over 60. Gives advice about welfare benefits and provides financial help towards essential care.	Twyman House 16 Bonny Street London NW1 9PG  Helpline: 0845 300 7585 <a href="http://www.counselandcare.org.uk">www.counselandcare.org.uk</a>
<b>Foundation for People with Learning Disabilities</b>	Works with people with learning disabilities to improve the quality of their lives.	7th Floor 83 Victoria Street London SW1H 0HW  Tel: 020 7802 0300 <a href="http://www.learningdisabilities.org.uk">www.learningdisabilities.org.uk</a>
<b>Headway – brain injuries association</b>	Sets up self-help and support groups; provides information, publicity and booklets on patients' problems, and help for families.	4 King Edward Court King Edward Street Nottingham NG1 1EW  Helpline: 0808 800 2244 Tel: 0115 924 0800 (Nottingham) 020 7841 0240 (London) <a href="http://www.headway.org.uk">www.headway.org.uk</a>
<b>Help the Aged</b>	Promotes and develops practical programmes. Offers free advice through Senior Line and via information leaflets.	St James's Walk Clerkenwell Green London EC1R 0BE  Welfare Rights AdviceLine: 0808 800 6565 <a href="http://www.helptheaged.org.uk">www.helptheaged.org.uk</a>

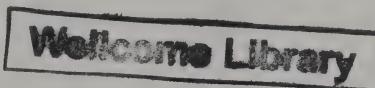
Organisation	What it is/does	Contact
<b>Linacre Centre for Healthcare Ethics</b>	Catholic centre for bio-ethics. Produces academic and other material on a range of issues in healthcare, including euthanasia and the withholding and withdrawing of treatment and care. Also provides advice to health practitioners on ethical aspects of their work.	60 Grove End Road London NW8 9NH  Tel: 020 7806 4088 <a href="http://www.linacre.org">www.linacre.org</a>
<b>Law Society</b>	Regulatory body for solicitors in England and Wales. Provides an online guide to professional conduct.	113 Chancery Lane London WC2A 1PL Lawyerline advice and information: 0870 606 2588
<b>MENCAP</b>	Offers support for people with a learning disability and their families. Provides specialist information, homes, leisure activities and further education.	123 Golden Lane London EC1Y 0RT  Helpline: 0808 808 1111 Tel: 020 7454 0454 <a href="http://www.mencap.org.uk">www.mencap.org.uk</a>
<b>Mind (National Association for Mental Health)</b>	Mental health charity in England and Wales – works for a better life for everyone with experience of mental distress.	15-19 Broadway Stratford London E15 4BQ  Tel: 020 8519 2122 Mindinfoline: 08457 660 163 <a href="http://www.mind.org.uk">www.mind.org.uk</a>
<b>Motor Neurone Disease Association</b>	Independent charity that offers support to people with Motor Neurone Disease and those who care for them.	PO Box 246 Northampton NN1 2P2  Tel: 01604 250505 Helpline: 08457 626262 <a href="http://www.mndassociation.org.uk">www.mndassociation.org.uk</a>
<b>National Autistic Society</b>	UK charity providing information and support for people with autism spectrum disorders and their families. Also provides information for professionals.	393 City Road London EC1V 1NG  Tel: 020 7833 2299 Helpline: 0870 600 85 85 <a href="http://www.nas.org.uk">www.nas.org.uk</a>



Organisation	What it is/does	Contact
<b>Official Solicitor</b>	<p>Provides representation for minors or adults under legal disability in county court or High Court proceedings in England and Wales. Protects the best interests and human rights of those who are unable to represent themselves in the legal process.</p>	<p>81 Chancery Lane London WC2A 1DD</p> <p>Tel: 020 7911 7127 <a href="http://www.offset.demon.co.uk">www.offset.demon.co.uk</a></p>
<b>Public Guardianship Office</b>	<p>Provides financial protection services for clients who are not able to manage their financial affairs because of mental incapacity. Supports the families and advisers of the person who is incapable.</p>	<p>Archway Tower 2 Junction Road London N19 5SZ</p> <p>Customer Service Helpline 0845 330 2900 Enquiry Line: 0845 330 2900 <a href="http://www.guardianship.gov.uk">www.guardianship.gov.uk</a></p>
<b>Relatives and Residents Association</b>	<p>Helps with finding the right care home and with costs. Gives practical advice to anyone with an elderly relative or friend living in a home or long-stay hospital.</p>	<p>5 Tavistock Place London WC1H 9SW</p> <p>Adviceline: 020 7916 6055 <a href="http://www.relres.org.uk">www.relres.org.uk</a></p>
<b>RESCARE (The National Society for mentally disabled people in residential care)</b>	<p>Provides information, advice and support to families including legal advice.</p>	<p>Rayner House 23 Higher Hillgate Stockport SK1 3ER</p> <p>Tel: 0161 474 7323 <a href="http://www.rescare.org.uk">www.rescare.org.uk</a></p>
<b>Respond</b>	<p>Runs a national helpline for people with learning disabilities, professionals and carers, dealing with the issues of abuse and abusing.</p>	<p>Third Floor 24-32 Stephenson Way London NW1 2HD</p> <p>Helpline: 0808 808 0700 <a href="http://www.respond.org.uk">www.respond.org.uk</a></p>

Organisation	What it is/does	Contact
<b>SANE</b>	Runs a phone helpline giving advice on all forms of mental illness and offering support to sufferers, their friends, families and professionals.	1st Floor Cityside House 40 Adler Street London E1 1EE  Helpline: 0845 767 8000 <a href="http://www.sane.org.uk">www.sane.org.uk</a>
<b>Scope (Major disability charity with a focus on cerebral palsy)</b>	Provides a wide variety of services for disabled people including accommodation, educational and training facilities, and fieldwork support for disabled people and their families.	6 Market Road London N7 9PW  Tel: 020 7619 7257 Cerebral Palsy Helpline: 0808 800 3333 <a href="http://www.scope.org.uk">www.scope.org.uk</a>
<b>Speakability</b>	Supports people living with aphasia and their carers.	1 Royal Street London SE1 7LL  Tel: 020 7261 9572 Helpline: 080 8808 9572 <a href="http://www.speakability.org.uk">www.speakability.org.uk</a>
<b>Stroke Association</b>	Provides practical support for people who have had strokes, their families and carers.	Stroke House 240 City Road London EC1V 2PR  Tel: 020 7566 0300 Helpline: 0845 30 33 100 <a href="http://www.stroke.org.uk">www.stroke.org.uk</a>
<b>United Kingdom Homecare Association</b>	Promotes high standards in domiciliary care services. Provides helpline for members and a consultancy service for non-members.	42b Banstead Road Carshalton Surrey SM5 3NW  Tel: 020 8288 1551 <a href="http://www.ukhca.co.uk">www.ukhca.co.uk</a>

Organisation	What it is/does	Contact
<b>VOICE UK</b>	Support and action group for people with learning disabilities who have been abused. Puts people in touch with counsellors and other professionals and provides counselling, advice and other services.	PO Box 238 Derby DE1 9NJ  The College Business Centre Uttoxeter New Road Derby DE22 3WZ  Tel: 0870 013 3965 <a href="http://www.voiceuk.clara.net">www.voiceuk.clara.net</a>
<b>Voluntary Euthanasia Society</b>	Provides advice on making an Advance Statement.	13 Prince of Wales Terrace London W8 5PG  Tel: 020 7937 7770 <a href="http://www.ves.org.uk">www.ves.org.uk</a>











Other booklets in this series:

*Making Decisions: A guide for healthcare professionals*

*Making Decisions: A guide for social care professionals*

*Making Decisions: A guide for family and friends*

*Making Decisions: Planning for future incapacity*

*Making Decisions: A guide for people with learning difficulties*

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Copies of these booklets are available from:

Mental Incapacity Branch

Family Policy Division 1

Lord Chancellor's Department

4th Floor, Selborne House

56-60 Victoria Street

London SW1E 6QW

[www.lcd.gov.uk/family/famfr.htm#part10](http://www.lcd.gov.uk/family/famfr.htm#part10)